IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6968 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI L CHAUDHARY

Versus

GOVT OF GUJARAT

Appearance:

MR KIRIT I PATEL for Petitioners

MR SP DAVE for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 29/02/2000

ORAL JUDGEMENT

1. Being aggrieved by and dissatisfied with the judgement and order of the Special Secretary, dtd. 30th October, 1987, in the case of SRD/LAND/538/87539/86, wherein the Special Secretary was pleased to quashed and

set aside the order of the Collector, Mehsana dtd. 30th April, 1986 and also quashed and set aside the order of the Assistant Collector dtd.5/2/83 on the ground that the land is Gauchar land, hence the petitioner has filed this petition before this Court. This Court on 17th October, 1988, pleased to issue notice and also granted status-quo regarding the possession of the plot of the disputed land in this behalf and thereafter the said matter was admitted on 8/12/88 and ad-interim relief was continued from time to time.

2. Today, the matter is on board for final hearing. The basic facts giving rise to the present petition are as under ;

In the petition, it has been stated that petitioners are farmers engaged in planting trees at Ragpur in Mehsana District. The Assistant Collector, Patan, by his order dtd.5/2/1983, allotted the land on lease basis for the period of 10 (ten) years from 5th February, 1983. The description of the allotted land is as under;

SR. NO.	LEASEE'S NAME	SURVEY NO.	DISTRONITED/LAMD ACRE-GUNTHAS
1.	Ramjibhai Laljibhai Chaudhary.	12	3.04
2.	Jorabhai Becharbhai Chaudhary.	12	3.00
3.	Virjibhai Virsangbhai Chaudhary.	12	3.00
4.	Jaisangbhai Jorabhai Chaudhary.	12	3.00
5.	Narsangbhai Veljibhai Chaudhary.	12	2.00
6.	Tejabhai Ramjibhai Chaudhary.	12	3.00
7.	Devjibhai Jorabhai Chaudhary.	12	3.00

3. It was alleged in the petition that the

Government has handed over the possession of the above land to the petitioner in 1983 subject to the conditions of the above order in this behalf. Thereafter, the petitioner had planted trees upon the said land and also made elaborate arrangements for watering the plants. As a result of doing all these, the petitioners had to incur huge expenditure. It was alleged in the petition that there were about three to four thousand trees upon this land, which was in possession of the petitioners.

4. It was alleged in the petition that somewhere in the 1984, Shri Chaudhri Narsibhai Laljibhai-respondent NO.2 and others preferred revenue appeals being Appeal Nos.86/84 and 87/84 against the order of Assistant Collector dtd.5.2.1983. The Collector Mehsana vide his judgement and order dtd.30th April, 1986, was pleased to allow the appeal and pleased to quashed and set aside the order of the Assistant Collector dtyd.5/2/83 and remanded the matter to the Assistant Collector, which has been produced at Annexure-B to the petition.

5. Being aggrieved by and dissatisfied with the order of the Collector, the petitioners had preferred revision application before the Government of Gujarat at Ahmedabad challenging the order of remand passed by the Collector, Mehsana. The Special Secretary was also pleased to grant stay during the pendency of the revision application.

6. The Special Secretary, Revenue Department, State of Gujarat by his judgement and order dtd.8/8/86 was pleased to quashed and set aside the order of the Collector, dtd.5/2/83. The said order has been produced at Annexure-D. It appears that some other proceedings were also initiated before this Court by the petitioners challenging the order of the Special Secretary. The petitioner contended before me that the Special Secretary completely forgot to take into consideration the factum of of the land in question having being declared as `vacant land' by the Collector on 24th September, 1973 and thus, the Special Secretary committed a serious error in law while coming to the conclusion that the land in question is `Gochar Land'. In this view of the matter, the order of the Special Secretary deserves to be quashed and set aside.

7. It was further contended that before the Special Secretary, the order of the Collector was only challenged, however, the Special Secretary has gone beyond his scope of the order and has set aside even the order of the Assistant Collector, which was not subject

matter before the Special Secretary, and therefore also to that extent, the order of the Special Secretary is without jurisdiction and deserves to be quashed and set aside.

8. It was further contended that the Special Secretary ought to have considered that the present petitioners have planted trees upon the land in question and also incurred heavy expenses towards various arrangements for watering the plants etc. and therefore, also the the order of the Special Secretary requires to be quashed and set aside.

9. It was further submitted that the order of the Assistant Collector was in conformity with the government policy and therefore also, the Special Secretary ought not to have quashed and set aside the order of the Assistant Collector. It was further submitted that the land in question is vacant land from 24th March, 1973, so the order of the Assistant Collector is just and proper. It was further submitted that if there is any breach of any of the conditions, then only the lease can be cancelled. However, the Special Secretary has committed error in coming to the conclusion that the land in question is a Gauchar land, and therefore also the impugned order is liable to quash and set aside.

10. Learned counsel for the petitioner has also relied upon the order of the Talati-cum-Mantri pursuant to the order dtd.24th June, 1973. The Collector, in its order already declared that the land in question is Govt. waste land not Gauchar land, and therefore, the finding of the Special Secretary that the land in question is Gauchar land, is contrary to and in consistence with the record of the case.

11. Shri S.P. Dave, learned A.G.P. has submitted that in any of the matter, the order of the Special Secretary based on evidence on record and therefore, under Article 226 and 227 of the Constitution of India, this court should not interfere with the order of the revisional order in this behalf. I have seen the reasonings of the Special Secretary. The Special Secretary has also stated in its order that the land in question is Govt. waste land and it is also stated that after the order of the Collector dtd.24th March, 1973, the land was Hollow land and not Gauchar land. However, the assumption on the part of the Special Secretary, is based on the fact that the land has become Gauchar land. I have also seen the order of the Assistant Collector in which also the Assistant Collector after considering the

facts and circumstances of the case it is stated that the applicant cannot be given the land for planting trees because is it an Educational Trust and notification has not been issued and Gram Panchayat has not been heard. However, the Assistant Collector has considered the record of the case.

12. In my view, both the order of the Collector passed in regular appeal No.87/84 dtd.30th April, 1986, as well as the order of the Additional Special Secretary dtd.20th October, 1987 are required to be quashed and set aside as both the orders are contrary to and in consistence with the order and record and proceedings of the case, and hence the petition deserves to be allowed and is accordingly allowed. Rule is made absolute, with no order as to costs.

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